

STATE HOUSING APPEALS BOARD

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Minutes of the January 29, 2013 Board Meeting

The State Housing Appeals Board (“SHAB” or the “Board”) held a public meeting on January 29, 2013 at Warwick City Hall.

ATTENDANCE

The following members attended the meeting: Chairwoman Kelley Morris, Joseph Caffey, Brenda Clement, James Grundy, Robert Cuttle and June Sager Speakman. Municipal alternate member Steven Stycos was not required to attend with full complement of municipal members. Also present were Steven M. Richard, legal counsel to the SHAB, and Christine DaRocha, administrative staff to the SHAB.

AGENDA ITEMS

1. Call to Order

Chairwoman Morris called the meeting to order at 9:31 a.m.

2. Review of Minutes from 12/11/12 Meeting

Mr. Grundy moved and Mr. Caffey seconded the motion to approve the minutes of the December 11, 2012 Board meeting. The motion was approved unanimously.

3. Continuation of Hearing in Brushy Brook (LR-6A Owner, LLC) v. Town of Hopkinton Local Review Board, SHAB Appeal No. 2010-03

Chairwoman Morris stated her view that there are three central issues raised in the appeal. First, SHAB must consider whether the Planning Board denied the application or approved it with conditions. Second, the appeal's predominant issue concerns density considerations. Third, the Planning Board Decision raised an issue of reconfiguration of the development under the Town's cluster regulations. Ms. Morris also reiterated that the applicant confirmed at the last hearing that it is not challenging conditions 3 through 6 of the Planning Board Decision.

Mr. Grundy moved and Mr. Caffey seconded the motion to accept the parties' stipulation that conditions 3 through 6 of the Planning Board Decision are not in dispute and are hereby adopted by SHAB. The motion was approved unanimously.

Discussion continued on whether the Planning Board Decision was a denial or an approval with conditions. Ms. Morris stated that the developer should not be allowed to frame a ruling as a denial just by requesting a substantial number of units in its application. Ms. Morris directed the Board to the Low and Moderate Income Housing Act, Section 45-53-4 (4) (vii), which states the local review board may deny the request for several reasons or alternatively it may approve the application with the conditions. Mr. Grundy stated that his view that the Planning Board Decision appears to be closer to a denial than an approval with conditions, citing that the allowed development is approximately half of what the original application sought with a different configuration.

Ms. Morris moved and Mr. Cuttle seconded the motion to deem the Planning Board Decision to be an approval with conditions. The motion was approved, 5 votes to 1, with Mr. Grundy voting no.

Ms. Morris raised as the next issue the consideration of whether conditions imposed by the Planning Board Decision are consistent with the Town's affordable housing plan. She noted that the issue of "infeasibility" does not appear to be relevant here because the applicant is a for-profit developer, and such developers are not included within the Act's definition of "feasibility." Ms. Morris stated that the Planning Board issued detailed and proper findings showing the consistency of its actions with the affordable housing plan. Applying the standards of review delineated in 45-53-6(c), Ms. Morris

views the Planning Board's Decision as consistent with the affordable housing plan. Regarding Hopkinton's efforts to increase its low and moderate income housing, Ms. Morris referred to Table 5 of the affordable housing plan and stated that the Town appears to be enhancing its affordable housing in a manner consistent with the timing and goals stated in Table 5. Ms. Morris also noted the Town's proper consideration of health and safety concerns affecting the existing residents, especially as they pertained to drinking water and DEM issues. Regarding the extent to which the community applies local zoning ordinances and review procedures evenly on subsidized and unsubsidized housing applications, Ms. Morris noted that the Planning Board paid close attention to the density requirements for zoning as well as the subdivision cluster requirements.

Ms. Speakman stated her view that the Planning Board Decision is consistent with both the affordable housing plan and the comprehensive plan. Ms. Speakman noted that the Planning Board evaluated properly by focusing on health and safety concerns, environmental impacts, and efficient strategic planning based on the municipality's infrastructure.

Ms. Clement agreed and stated that the Town is carefully considering issues relating to both family and elderly affordable housing, working to enhance its affordable housing, and cooperating with local groups in such efforts. Ms. Clement also referenced the density bonus awarded to the developer on the property, which allows the

construction of additional units.

Mr. Grundy agreed that the Town applied a density bonus. He noted that some of the Town's expressed concerns, such as additional students and costs to the school system, will be evident in any proposal to build more family housing. Overall, he stated his view that the Town had acted in a manner consistent with its affordable housing plan, even though he does not agree entirely with all of the Town's findings.

Attorney Richard stated that SHAB must focus on whether conditions 1 and 2 of the Planning Board Decision are consistent with the Town's approved affordable housing plan. He referred the Board to the non-exhaustive standards of review articulated in Section 45-53-6(c).

Regarding condition 1 in the Planning Board Decision, Chairwoman Morris stated her view that the Planning Board acted consistent with the affordable housing plan in allowing the builder to construct 116 to 145 units of single family houses applying the density bonus.

Mr. Grundy moved and Ms. Speakman seconded that the Board find that condition 1 of the Planning Board Decision is consistent with the Town's affordable housing plan for reasons discussed by the Board in its deliberations and that the Town properly applied and considered the factors listed in 45-53-6(c). The motion was approved

unanimously with all Board Members voting in the affirmative.

Ms. Speakman moved and Ms. Clement seconded that the Board find that condition 2 of the Planning Board Decision is consistent with the Town's affordable housing plan for reasons discussed in the Board's deliberations, and that the Planning Board properly applied and considered the standards articulated in 45-53-6(c).

Mr. Grundy raised an issue regarding the standard articulated in 45-53-6(c)(5), especially as it relates to the application of cluster zoning and the calculation of yield plans. The Board discussed its understanding of how the Planning Board implemented both its cluster requirements and the density bonus.

Ms. Clement moved and Mr. Grundy seconded that the Board find that condition 2 of the Planning Board's Decision is consistent with the Town's affordable housing plan. The motion was approved unanimously.

Ms. Clement then moved and Ms. Speakman seconded that SHAB find that, based upon SHAB's votes confirming that conditions 1 and 2 of the Planning Board Decision are consistent with the affordable housing plan and applying Section 6(d) of the Low and Moderate Income Housing Act, SHAB affirm the Planning Board Decision. The motion was approved unanimously.

Attorney Richard will draft SHAB's written Decision for review by the members prior to its issuance.

The hearing was fully transcribed, and SHAB has a complete transcript in its records available upon request.

4. Adjournment

The meeting adjourned at 10:23 a.m.

Respectfully submitted,

Kelley Morris, Esq., Chairwoman